

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ALI MOALIN MUSE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 267,845
<b>MARLEY COOLING TOWER CO.</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the March 4, 2002 preliminary hearing Order of Administrative Law Judge Julie A.N. Sample. Claimant contends the Administrative Law Judge exceeded her jurisdiction in failing to award temporary total disability benefits from July 6, 2001, to the date of the preliminary hearing. In the Order, the Administrative Law Judge ordered temporary total disability compensation beginning the date of the preliminary hearing, February 27, 2002, and continuing until claimant reached maximum medical improvement or until claimant was released to substantial and gainful employment, whichever occurs first. That is the only issue before the Appeals Board (Board) for its consideration at this time.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds it does not have jurisdiction to consider this matter and claimant's appeal is dismissed.

K.S.A. 44-551 and K.S.A. 44-534a control the appeal of preliminary hearing matters to the Board.

K.S.A. 44-551(b)(2)(A) limits appeals from preliminary hearing orders under K.S.A. 44-534a and amendments thereto "unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

K.S.A. 44-534a limits Board review of preliminary hearings to the following issues:

- (1) Whether claimant has sustained an accidental injury.
- (2) Whether the injury arose out of and in the course of employment.
- (3) Whether notice is given or claim timely made.
- (4) Whether certain defenses apply.

Those are considered jurisdictional and subject to review by the Board.

K.S.A. 44-534a specifically grants the administrative law judge the jurisdiction to decide issues dealing with temporary total disability compensation.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977); Taber v. Taber, 213 Kan. 453, 516 P.2d 987 (1973); Provance v. Shawnee Mission U.S.D. No. 512, 235 Kan. 927, 683 P.2d 902 (1984).

The Administrative Law Judge had jurisdiction to determine claimant's entitlement to temporary total disability compensation and the date when those temporary total disability benefits would commence. The Board does not have jurisdiction to review this matter at this time and claimant's appeal should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the claimant in this matter should be, and is hereby, dismissed, and the Order of Administrative Law Judge Julie A.N. Sample dated March 4, 2002, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2002.

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BOARD MEMBER

c: Thomas Stein, Attorney for Claimant  
Mark Beam-Ward, Attorney for Respondent  
Julie A.N. Sample, Administrative Law Judge  
Philip S. Harness, Director